



COLORADO

Department of Public Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

Alamosa River Watershed
Natural Resource Damages

Solicitation for Project Proposals

July, 2017

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ATTACHMENTS

Attachment A:	Example Contract
Attachment B:	Evaluation Sheet
Attachment C:	NEPA Offeror Information Requirements
Attachment D:	Question Submittal Form

ACRONYMS

ARWRMP	Alamosa River Watershed Restoration Master Plan
CDPHE	Colorado Department of Public Health and Environment
CERCLA	Comprehensive Environmental Resource Conservation and Liability Act
HMWMD	Hazardous Materials Waste Management Division
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NRDA	Natural Resource Damages Assessment
OMM	Operation, Monitoring and Maintenance
SOW	Statement of Work
SPP	Solicitation for Project Proposals

DEFINITIONS

Alamosa River Foundation

The non-profit corporation is organized for the purpose of restoration of the Alamosa River. The nine individuals represent the Conejos County Commissioners, Alamosa River Keepers, LaJara-Alamosa Conservancy District, Alamosa River Watershed Restoration Foundation, Capulin Water District, Terrace Reservoir Irrigation, Inc. and three local stakeholders.

In-Kind Services

In-Kind contributions are donated time and effort, real and personal property, and goods and services. The worth of the contributed service is the fair market value.

Matching Funds

Matching funds includes in-kind service, partner contributions or cash funds. Each NRDA dollar is leveraged with at least one non-NRDA dollar or equivalent goods and services. Funds from NRDA cannot be used as in-kind or matching support. Matching funds cannot include Federal or State funds for pre-existing projects.

Partnership Contribution

Partnership contributions can be in the form of cash contributions, the donation of materials or tools, or the contribution of in-kind services, such as volunteer labor and technical expertise. Contributions are restricted to those directly involved in the proposed scope of work, but can include planning and other related activities conducted within one year of the proposed date for the project.

Trustee Council

The Trustee Council is comprised of the Federal and State of Colorado committee of representatives of the statutory natural resource trustees.

Work Group

The Work Group is comprised of five persons that includes the five Trustee Council representatives.

**Hazardous Materials and Waste Management Division
Alamosa River Watershed, Natural Resource Damages
Solicitation for Project Proposals**

Offeror Registration Form

All potential Offerors that may be interested in submitting proposals under this request must complete and return this registration form. This will enable the CDPHE to contact all potential Offerors in the event of changes to the SPP, clarification or extension.

Offeror Organization_____

Type of Organization, Status, Registrations (i.e. non-profit, government or private entity)_____

Name of Official Representative_____

Address_____

Phone number_____

Fax number_____

Email address_____

Please return this form by mail or FAX to:

Susan Newton

Alamosa River Watershed NRDA Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530
Phone: (303) 692-3321 Fax: (303) 759-5355

Susan.newton@state.co.us

This form must be received by August 4, 2017

Alamosa River Watershed, Natural Resource Damages Solicitation for Project Proposals

I. ISSUE AND TIMELINE INFORMATION

- A. Issuing Office: This Solicitation is offered by the Colorado Department of Public Health and Environment's the Hazardous Materials and Waste Management Divisions (HMWMD). HMWMD will be the point of contact regarding this solicitation for projects.
- B. Invitation to submit proposals: The State of Colorado is posting this solicitation so that Offerors who have an interest may submit a proposal in accordance with this solicitation. Please read and be aware of the administrative information included in this document.
- C. Any eligible party wishing to submit a proposal under this solicitation must submit a registration form by April 12, 2017 prior to the Mandatory Offerors Working Meeting for Q&A. The purpose of this registration is to enable the HMWMD to keep all parties informed of changes and/or provide clarification should questions arise regarding this document.
- D. Schedule of Activities –

Activity	Date
Initiation of Solicitation for Project Proposals, Advertise NRDA SPP	July 21, 2017
Offeror Registration Form Deadline	August 4, 2017
Offerors Working Meeting for Q&A	September 8, 2017
Response to Q&A Offeror Registration Form Deadline	September 15, 2017
Proposal Submission Deadline	September 28, 2017
Initial Screening Review of Proposals	October 2, 2017
Announcement and Advertisement of Public Meeting (two weeks prior)	September 20, 2017
Public Meeting/Project Site Visits/ Public Comment Period Begins	October 4, 2017
Written Public Comment Deadline	November 3, 2017

Activity	Date
Evaluation by Work Group	November 9, 2017
NEPA Analysis	TBD
Recommendations to Trustees	TBD
Contract Award & Notice to Proceed	January 2018

Written Inquires, Registration Forms and Proposals shall be directed to:

Susan Newton

Alamosa River Watershed NRDA Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530
Phone: (303) 692-3321 Fax: (303) 759-5355

Email: Susan.newton@state.co.us

Obtain the Solicitation for Project Proposal (SPP):

Pearl Campos Records Center

Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

(303) 692-3331 Phone; (303) 759-5355 FAX Email: Pearl.Campos@state.co.us

Or download from the State of Colorado web page:

<https://www.colorado.gov/pacific/cdphe/summitville-mine>

II. BACKGROUND AND GENERAL INFORMATION

A. BACKGROUND

The purpose of this solicitation is to solicit proposals for the restoration of Alamosa River Watershed and natural resources injured or lost as a result of the operations at the Summitville Mine Superfund Site in Rio Grande County, Colorado. The United States and the State of Colorado filed a cost recovery action pursuant to CERCLA section 107 against several defendants in the federal courts litigation captioned United States of America and the State of Colorado v. Robert M. Friedland, et al., No. 96-1213, District of Colorado. The principal defendant in that case, Robert N. Friedland, agreed to settle the claims against him in December 2000.

Pursuant to that settlement, Mr. Friedland agreed to pay a sum certain to the United States and the State of Colorado. The funds from the Friedland settlement have been provided to the State and to the U.S. EPA for future remediation and operation and maintenance at the Site. A sum of \$5,000,000 was paid to the Trustees for natural resource damages. The State established a Summitville Natural Resource Damages Trust Fund ("Colorado NRD Trust Fund") as a separate and segregated interest-bearing custodial account within the State Treasury. The Trustees agreed to coordinate the use of NRD funds from the account for administration and expenditures.

The funds are available only for the restoration, replacement or acquisition of natural resources that have been injured or lost as a result of the release of hazardous substances from the Summitville Mine Superfund Site, in accordance with CERCLA.

The Governor of the State of Colorado has designated the following Trustees to act on behalf of the public in protecting Natural Resources of the State: The Attorney General of the State of Colorado; Executive Director of the Colorado Department of Public Health and Environment; and the Executive Director of the Colorado Department of Natural Resources.

The Federal Trustees acting on behalf of the public are the Secretaries of the Department of Agriculture and the Department of the Interior. The US Forest Service is acting on behalf of the Secretary of Agriculture, and the US Fish and Wildlife Service and Bureau of Land Management are acting on behalf of the Secretary of the Interior.

The State and Federal Trustee Council ("Trustee Council") were charged with the development of the Alamosa River Watershed Restoration Master Plan and Environmental Assessment (Master Plan) and with the subsequent administrative guidelines and the solicitation of projects for utilization of these NRDA funds.

The CDPHE Trustee representative is charged with and performs the administrative and expenditure responsibilities on behalf of the Trustees. A Work Group comprised of the five Trustee Council representatives will be tasked with evaluating and reviewing the proposals received in response to this solicitation of NRDA projects for the Alamosa River watershed.

In 2005, the Trustees developed the Alamosa River Watershed Request for Proposals, 06-HAZ0001 to solicit NRDA project proposals that addressed restoration objectives and preferred actions described in the Master Plan. In 2007, the Trustees approved three Tier 1 and 2 projects in accordance with the preferred actions described in the Master Plan. The Trustees approved 1) Public Land Alamosa River Watershed Restoration project that stabilized eroded stream banks, reestablished wetlands, and restored aquatic habitat in the area above the confluence of Wightman Fork down to the Alamosa River Campground, which is completed; 2) the Alamosa River In-Stream Flow project to improve the sustainability of flows in the Alamosa River downstream of the Terrace Reservoir, which is underway; and 3) the Alamosa River Watershed Restoration project, which restores 2.6 miles of streambed and riparian corridor to reestablish the habitat and health of the Alamosa River, which is ongoing in and near the Town of Capulin, Colorado.

In 2007, the Trustees awarded NRDA funding in the amount of \$2,354,325.00 to be used towards the Public Land Alamosa River Watershed Restoration project and the Alamosa River Watershed Restoration Project.

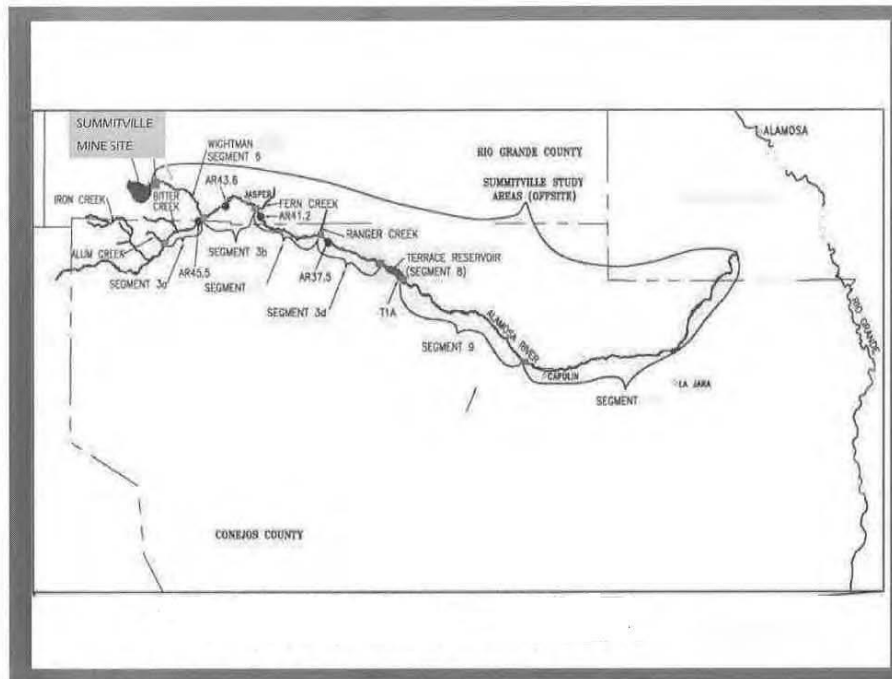
In 2011, the Trustees awarded NRDA funding in the amount of \$2 million dollars to be used to fund the Alamosa River In-Stream Flow project.

In 2014, the Trustees awarded an additional \$660,000 from the NRDA funds to be used towards the Alamosa River Watershed Restoration Project, such that the combined amount authorized for this Project was \$1,1650,000.00.

There remains approximately \$1.678 million dollars in the Colorado NRD Trust Fund. On November 4, 2016, the Trustees approved a resolution to solicit new projects for the use of the remaining NRDA funds. Accordingly, the Trustees now solicit additional NRDA project proposal that address restoration objectives and preferred actions described in the Master Plan. Proposals received will be evaluated using the process described herein. The Work Group may reject proposals that do not meet the eligibility evaluation criteria. Those projects that meet the criteria will be ranked. The Work Group will then determine which projects should be funded and at what funding level. The Work Group will prepare a Project Recommendation Memorandum for the Trustees. The Trustees will prepare a Final Memorandum issued to the public for the administrative record. The Trustees reserve the right to reject any or all proposals, or a portion of any specific proposal.

The preferred boundaries for projects under this Solicitation for Project Proposals are those areas approximately situated within the Alamosa River watershed and generally indicated on Figure 1.

FIGURE 1: ALAMOSA RIVER WATERSHED



B. FUNDING

Approximately \$1.678 million remains available from the NRDA recovery fund to implement natural resource restoration for the Alamosa River Watershed, which the Trustee Council is soliciting project proposals for at this time. The Work Group will prefer projects for which the Offeror has arranged the maximum matching funds from other funding sources; in an effort to maximize beneficial use of the NRDA recovered funds. **Funds obtained through this solicitation may not be used for planning and administrative purposes, or for responsibilities assumed under other regulatory programs, such as reimbursements or repayments of pre-existing obligations. The dollar amount stated above for projects cannot be exceeded.**

The number of projects to be funded and the level of funding will be based on how well each proposal addresses the restoration objectives described in the Master Plan and meets the evaluation criteria as well as on the availability of funds. An Offeror may submit a proposal for more than one project. A proposal may contain projects in several categories (e.g., one project may have both restoration of wetlands and acquisition of wildlife habitat). Each project proposal will be evaluated separately and ranked relative to other projects addressing the

same restoration goal. If an Offeror is submitting a proposal for projects that are substantially different from one another, they should be submitted as separate proposals or in a format that will allow separate evaluation of the different projects. The Work Group will not accept multiple proposals from one Offeror that are substantially similar (e.g. different variations of the same project).

These funds may be used to augment existing or on-going projects. However, the activities funded by these awards shall be used only for work performed and commencing after the date of Notice to Proceed. In such a proposal, the Offeror must state how the activities described in the proposal expand the existing activities, do not duplicate current activities, and address the restoration objectives stated in the Master Plan.

Those Offerors who are proposing to use a mixture of funding sources (matching funds) are responsible for securing all such funds. Should the Offeror fail in attempts to secure matching funds, the project may be put on hold for a designated time period (to give the Offeror additional time to secure other funds), or the NRDA funding may be cancelled in total or the Trustees and/or Trustee representative may determine that the NRDA-funded portion of the project can continue.

C. ELIGIBILITY

1.
 - A. To be eligible, Offeror agencies and organizations must be one of the following:
 - A public or private non-profit entity possessing a tax exempt status under section 501 (c)(3) of the IRS code; or
 - A local, state or federal governmental agency, or
 - A combination of the above organizations; or
 - An entity capable of showing they have access to other funding sources to cover costs not reimbursable from the NRDA funds.
 - B. Offerors must have the financial and technical capability to successfully complete a restoration project, and must have experience with project management and contracting.
2. More than one organization may apply for funding with other organizations. One organization must assume the responsibility of prime contractor. The other organizations in the collaborative effort will be considered subcontractors to the prime contractor. The relationship between the organizations, the lines of communication, and the responsible parties in each organization must be described in addition to the information required in Section V.B.1. "Description of the Organization".

3. Offerors must show commitments for a minimum of 50% of their overall project costs from non-NRDA sources, either with dollars or in-kind services, and the non-NRDA funds must buy down the cost of the project.

III. STATE CONTRACTUAL REQUIREMENTS

Successful Offeror(s) will be subject to contract negotiations with CDPHE resulting in a legal contract. An example contract is attached (see Attachment A). All potential Offerors are advised to familiarize themselves with the requirements of the attached example contract, which includes the SPP, Offerors SOW, project schedule and prices schedule. As a general rule, contract general and special provisions are required by State purchasing regulations and are non-negotiable. Offerors should not submit project proposals if they will be unable to fulfill contract requirements. Please note however that in some circumstances (e.g. the purchase of land or interest in land) some terms in the example contract may not apply. All questions regarding this process should be submitted to the Alamosa River Watershed NRDA Project Manager, Susan Newton no later than March 24, 2017. Questions may be submitted through phone, electronic mail or fax. Prior to March 24, 2017, questions may be submitted; however the Project Manager reserves the right to answer the question verbally, consult with the Trustee Council and prepare written responses to be delivered no later than April 7, 2017 to those that have submitted the Offerors Registration Form. In all cases, questions and answers to all inquiries received shall be consolidated and distributed to the Offerors who have registered no later than April 7, 2017.

The successful Offeror(s) will carry out the project under a multi-year, line item, hybrid fixed price/cost reimbursement contract (grant type)* with the State of Colorado. The contractor will be reimbursed for actual incurred costs, not to exceed the contract value.

**A cost summary shall be prepared by the Contractor, accompanied by supporting data, indicating costs claimed by cost elements including: labor, equipment, supplies, materials, lab analyses/reports, travel, subcontracts, and other direct and indirect costs. Contractors should also detail those costs that will be claimed as in-kind match, including but not limited to engineering, planning and administration.*

The Contractor shall submit an itemized invoice showing the personnel performing the work, work performed, and hours worked, contractual per hour rate, and subcontract documents and invoices. The invoice shall reflect the scope of work, work order, and costs identified by major task

Back up documentation must be available for review by CDPHE. Required documents include, but are not limited to: individual time sheets, travel reimbursement documentation, purchase orders, invoices or other actual payment records.

The Contractor prior to commencing work under the contract must obtain all permits, licenses and approvals.

IV. STATEMENT OF WORK

A. GENERAL SCOPE FOR OFFEROR'S PROPOSED RESTORATION PLAN AND PERFORMANCE STANDARDS

This Solicitation for Proposals is a result of the Alamosa River Watershed Restoration Master Plan and Environmental Assessment (Master Plan) prepared to assess all potential impacts to the Alamosa River watershed, inclusive of those impacts resulting from the Summitville Mine Superfund Site. The Master Plan is the most comprehensive document that describes the environmental impacts and outlines a set of potential restoration actions to address those impacts. The set of actions have been selected with a public review process as the preferred alternative of restoration actions. As such, the Master Plan is the most relevant document that should be reviewed by Offerors intending to submit proposals. The Master Plan can be reviewed online at [https://www.fws.gov/mountain-](https://www.fws.gov/mountain-prairie/contaminants/alamosaRiverWatershed.php)

[prairie/contaminants/alamosaRiverWatershed.php](https://www.fws.gov/mountain-prairie/contaminants/alamosaRiverWatershed.php). Additionally, electronic copies may be provided by contacting the Colorado Department of Public Health and Environment. If the Offeror wishes to review files at the CDPHE Records Centers, contact Pearl Campos (email: Pearl.campos@state.co.us and phone:

303-692-3331).

The Master Plan summarizes current environmental conditions and develops solutions for identified problems in the Alamosa River watershed that will lead to a healthier watershed. The scope of the Master Plan includes the entire watershed, with the exception of the Summitville Mine Site itself, which is addressed through the Superfund Program. The Master Plan covers a broad array of natural resources and watershed functions and values. The result is a multi-disciplinary approach to watershed assessment that has produced a prioritized plan for watershed restoration and enhancement.

The Alamosa River watershed comprises 148 square miles in the San Luis Valley of south-central Colorado. The main-stem of the Alamosa River is 51 miles long, extending from near the Continental Divide to east of the City of La Jara. Elevations vary from over 13,000 feet to about 7,600 feet. Key features in the watershed include:

- Summitville Mine, a gold mine that operated from 1986 to 1992 using open pit and cyanide leach methods but which is now a Superfund site;
- Terrace Reservoir, a storage impoundment for irrigation water;
- Extensive irrigated agriculture in the lower watershed;
- Extensive forested areas and hydrothermally altered zones in the

upper watershed.

Master Plan objectives as identified by local, state and federal stakeholders are:

- River and watershed health
- Protection of resources
- Restoration of impacted natural resources
- Bio-diversity
- Resource services to the public

The overall restoration strategy is to identify and pursue the opportunities for restoring lost natural values, and enhancing those existing features that have the highest potential for success and that have the most favorable ratio of likely benefits to likely costs. A "watershed restoration vision" was developed as a picture of what the watershed could look like after the Master Plan is implemented.

- Naturally functioning river channel system
- Balance between competing human and environmental uses of water
- Water quality that supports beneficial uses in the watershed
- Terrace Reservoir utilized reliably to its fullest capacity
- Sustainable fishery on the Alamosa River and quality terrestrial and avian habitat
- Restoration of riparian habitat in the watershed
- Efficient use of agricultural water from the Alamosa River
- Recreational opportunities in the watershed that benefit the public

Potential national, state, and local funding sources are summarized below. These sources could be used as matching funds for watershed NRDA funding.

- U.S. Army Corps of Engineers (Restoration of Abandoned Mine Sites (RAMS))
- American Sportfishing Association (Fish America Foundation)
- U.S. Department of Agriculture and Natural Resources Conservation Service (Integrated Research, Education, and Extension Competitive Grants, Farm and Ranch Land Protection Program, Conservation Reserve Program, Environmental Quality Incentives Program, Resource Conservation and Development, Small Watershed Program, Wetlands Reserve Program, Wildlife Habitat Incentive Program, Grassland Reserve Program)
- U.S. Fish and Wildlife Service (Partners for Fish and Wildlife)
- Patagonia (Environmental Grants)
- U.S. EPA (Regional Geographic Initiative Program, Assessment and Watershed Protection Program Grants)
- Department of Homeland Security

- National Research Initiative (Enhancing the Prosperity of Small Farms and Rural Agricultural Communities Competitive Grants)
- National Fish and Wildlife Foundation (Pulling Together Initiative Grant Program)
- National Geographic Society (Conservation Trust Grants)
- River Network (Watershed Assistance Grants)
- U.S. Department of Interior Bureau of Land Management
- U.S. Department of Agriculture Forest Service
- Colorado Water Conservation Board (Construction Loan Program)
- Colorado Division of Wildlife (Cooperative Habitat Improvement Program, Habitat Partnership Program, Colorado Waterfowl Stamp Program, Colorado Wetland Initiative Legacy Project, Colorado State Trust Lands)
- Colorado Department of Public Health and Environment (Clean Water Act Section 319 Non-point Source Grants)
- Great Outdoors Colorado Trust Fund (GOCO)
- San Luis Valley Wetland Focus Area Committee
- Rio Grande Headwaters Land Trust

The contract term: The State intends to award contracts with an estimated commencement date of December 2017 and with an end date that is mutually agreed to between the parties, not to exceed five years from the effective date of contract. The project plan shall be developed as outlined in this solicitation and in accordance with the following specifications.

The contractor shall be responsible to CDPHE for the ultimate results of the performance under the contract. However, the contractor shall not be subject to the direct control of the CDPHE or the Trustees regarding the means and methods of accomplishing the work.

Note: Projects cannot interfere with ongoing Summitville Mine Superfund Site activities.

B. TARGET NATURAL RESOURCES

The following Alamosa River watershed natural resources were injured, destroyed or lost as a result of the release of hazardous substances from the Summitville Mine Superfund Site:

- Surface water quantity and quality – impairment.
- Terrace Reservoir – lost operational flexibility and storage capacity.
- Sediments – contamination, erosion, and undesirable deposition.
- Riparian habitat (vegetative communities – injury and functional loss.
- Biological resources (wildlife resources) – injury.
- Agricultural use – limitations.

- Ground water and surface water or sediment, (including the bed, banks, or shoreline sediments) – contamination, erosion, and undesirable deposition.
- Geologic resources (i.e. soil) – contamination.
- Wildlife and Habitat – injury and loss.
- Wetlands – loss of ecological function.
- Vegetation – injury and loss.
- Land – contamination and erosional loss.
- Recreation use - loss

C. CATEGORIES OF PROPOSALS

Projects must include one or more of the following categories:

Restoration: Proposals may address any of the natural resources contained in the list Target Natural Resources. An injured resource can be included in the project even if the impact to it occurred from some other cause than the Summitville Mine Superfund Site operations.

Replacement/Acquisition: Proposal may address the replacement or acquisition of natural resources equivalent to those injured or lost as a result of historic operations at the Summitville Mine Superfund Site. For example:

- 1) portions of wetlands, riparian, and other ecosystems could constitute equivalent natural resources; and
- 2) acreage of similar ecosystems can be acquired for open space to be maintained in a natural state for protection of water quality and wildlife habitat.

Alamosa River Watershed Restoration Master Plan Projects:

The Alamosa River Watershed Restoration Master Plan presents a prioritized list of projects that the Trustees and the public have concluded will most benefit the watershed. Tier 1 projects have higher priority than the Tier II projects, which have higher priority than the Tier III projects. Proposals that address Tier I projects will be reviewed more favorably. The Tier I through Tier III projects are presented in the following table. Proposals addressing projects in any of the tiers favorably by the Work Group if project costs versus effectiveness and timeliness indicate that restoration of the resource involved will be completed promptly.

Projects
TIER I <ol style="list-style-type: none"> 1. Funding to complete ongoing stream bank project between Gunbarrel Road and County Road 10 2. Stream restoration from Gomez Bridge to Gunbarrel Road; Revegetation, dead tree management, noxious weed management, and grazing management in lower watershed 3. Purchase appropriate water rights for instream flow downstream of Terrace Reservoir 4. Trade of direct flow diversion right for storage of instream flow water rights in Terrace Reservoir (no new water source)
TIER II <ol style="list-style-type: none"> 1. Finish purchasing water rights 2. Stream restoration from Wightman Fork to Terrace Reservoir; dead tree management in upper watershed 3. Increase Terrace Reservoir spillway capacity to remove storage restriction (in return for instream flow storage); PMF Study 4. Riparian buffer zone 5. Sediment trap pilot project with water quality best management practices on Alum Creek 6. Reclamation of abandoned mines (Pass-Me-By mine only)
TIER III <ol style="list-style-type: none"> 1. Recreation or access easements in upper watershed (2 locations, approximately 100 acres total) 2. Conservation / recreation / access easements in lower watershed (approximately 500 acres total) 3. Lower watershed sediment deposition locations combined with stream restoration from County Road 10 to County Road 13 4. Mainstem lake for water quality (small size option) 5. Increased access to Terrace Reservoir (include parking lot, public education, trail)

Further information regarding the Summitville Mine Superfund Site is available from the Records Center of CDPHE. The full text of the Alamosa River Watershed Restoration Master Plan can be accessed at:

<https://www.fws.gov/mountain-prairie/contaminants/alamosaRiverWatershed.php>
<https://www.colorado.gov/pacific/cdphe/summitville-mine>

D. ROLES AND RESPONSIBILITIES OF THE STATE PROJECT MANAGER

Alamosa River Watershed NRDA Project Manager will be the single point of contact regarding this solicitation and any resulting contractual agreements. The Project Manager represents the interest of the Trustee Council in accordance with the MOU. The Alamosa River Watershed NRDA Project Manager's responsibilities will include: facilitating efforts of the Work Group; conducting site visits, providing consultation and technical assistance to successful Offerors in their restoration efforts, evaluating compliance with contractual requirements, and overseeing contract reimbursement and budget. The Project Manager will monitor and document project progress for compliance with contract requirements. In addition, the Project Manager will be responsible for coordinating with the Summitville Mine Superfund Site and assuring that proposed projects will not interfere with the Summitville Mine Superfund Site remedial actions.

CONTACT INFORMATION

Primary contact

Susan Newton

Alamosa River Watershed NRDA Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

(303) 692-3321-Phone; (303) 759-5355-FAX Email: susan.newton@state.co.us

Alternate contact

Doug Jamison

Alamosa River Watershed NRDA Project Manager
Colorado Department of Public Health and Environment
Hazardous Materials and Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

(303) 692-3304-Phone; (303) 759-5355-FAX Email: doug.jamison@state.co.us

V. OFFEROR RESPONSE FORMAT

A. INTRODUCTION

This section describes the information that must be furnished by the Offeror and it prescribes the format in which it must be presented. The Offeror must clearly and concisely state and discuss how they will accomplish the work described in the Statement of Work. The proposal must include the information as described in the 'Content' section below. The proposal must not exceed 20 pages (excluding budget and attachments such as resumes, proof of organizational status and registrations with regard to eligibility requirements, letters of public support, and design documents and maps), and must be double-sided and single-spaced. If any proposals exceed 20 pages in length, only the first 20 pages will be read and the entire evaluation will be based on those 20 pages. Each Offeror must submit 2 hard copies of each proposal, together with an original electronic and *.pdf format on flash drive.

The cover page (the first of 20 pages) of each proposal should contain the following:

- Project Name
- Project Description
- Project Offeror
- Point-of-Contact Name, Address, Phone and FAX Number, and Email Address

- Total Project Cost
- Amount of NRDA Funding Requested
- Matching Fund Sources, Type, Value and Status
- Signature of an Authorized Representative of the Offeror

B. CONTENT AND FORMAT REQUIRED

Description of the Offeror's Organization: (Suggested limit: one page) Describe prior experience with projects of similar scope and complexity. Describe previous experience with regard to each proposed project category or collaboration with organizations that have expertise in those areas. Provide evidence that the Offeror possesses the necessary financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them. Provide evidence that the organization meets the eligibility requirements of Section II.C.1.

1. Offeror agencies, organizations, and individuals must meet the following standards of responsibility:
 - a. The Offeror selected must be responsible for project costs including personnel, fringe benefits, supplies, operating expenses, travel, equipment, and capital items. The Offeror must provide the necessary financial, material, equipment, facility, personnel resources, and expertise, to meet all contractual requirements, and provide all services requested herein. Offeror must provide evidence that it possesses the necessary resources; or must present acceptable plans to subcontract for them; or must document commitment from, or an explicit arrangement with, a satisfactory source to provide them.
 - b. The Offeror must present a resume indicating experience with analogous projects and/or the capacity to perform the scope of work. The resume shall include the project description and objectives, the contracting entity, the cost of the project, the schedule for implementation, cost overruns and technical difficulties encountered. In addition, the Offeror shall indicate its experience with developing funding sources for matching with the NRDA funds.
2. Response to Statement of Work Requirements
 - a. Target Natural Resource(s): (Suggested limit: One page)
State the target natural resource(s) to be affected by or included in the proposal.
 - i. State the project type(s) from the above table of Master Plan Tier I, II, or III Project Types (Section IV.C).

- ii. Describe how the natural resources/sites were chosen for inclusion in the proposal.
 - iii. Describe how owners/managers of the target natural resource(s) will be/have been involved in proposal planning and implementation.
 - iv. Describe how the proposal will restore, replace or acquire the equivalent of injured natural resources, and how the development, design, implementation and restored site can be made available for public benefit.
 - v. Provide a detailed description of the area (acreage, linear footage, etc.) of natural resources to be restored in the proposal.
- b. Objectives: Provide clear, measurable, realistic, time-phased, objective(s) for the work proposed in each category.
- c. Operational Plan: Submit an operational plan that describes the proposal. Specifically, it is recommended that the Offeror refer to the Alamosa River Watershed Restoration Master Plan Table 5-6 for guidance in preparing the operational plan.
 - i. Describe in detail how the work described in each category will be implemented.
 - ii. Describe who the Offeror will collaborate with to accomplish the scope of work; include letters of support from those agencies you will be collaborating with, as well as community letters of support.
 - iii. Describe the type, donors and equivalent dollar amount of matching funds.
 - iv. Provide construction designs and drawings, if applicable, maps of proposed restoration location(s), and a schedule and/or time line for the completion of major project components. For proposals that require an engineering design, prior to construction final design documents must be submitted with appropriate professional engineer stamp or certification of design documents. Following construction completion surveyed as-builts documents will be required. The submittals shall be provided in hardcopy, original electronic and *.pdf format.

- v. Describe to what degree the proposal described in the operational plan matches the goal of NRDA fund expenditure.
 - vi. Describe how the proposal will be coordinated with complimentary, similar existing or other proposed restoration in the area, if any.
 - vii. Describe the operation, maintenance and monitoring (OMM) requirements and the entity(ies) accepting those responsibilities for the duration of the project and a minimum of 10 years thereafter, if applicable. Describe the plans or methods and schedule for how the project will be monitored to measure whether it is successful in achieving the restoration objectives. Describe the 6 and 12 month warranty inspections required following substantial completion of the proposed project. Detail the funding source, cost and entity responsible for conducting the long-term operation, maintenance and monitoring. This shall include an Annual Report documenting the OMM.
 - viii. Permits/Approvals/Certifications: Describe all permits, licenses, approvals, professional engineers stamps of engineering design and as-built documents and NEPA compliance (see Attachment D) that will be required to complete the project and describe current status/progress towards obtaining these permits/approvals.
 - ix. Project Schedule: Provide a timeline with identification of projects phases, milestones, midpoint and pre-final inspections.
 - x. Monthly Invoice and Status Report: Describe which activities outlined in the operational plan will be tracked, how they will be counted and how they will be reported in the monthly invoice.
 - xi. Project Documentation and Deliverables: Provide a list of documentation and deliverables that will be supplied for the proposed project and throughout the duration of the project including the OMM phase.
3. Cost/Price Data: Describe the total dollar amount requested for the project. Break out the total amount requested by budget categories (personnel, fringe benefits, travel, equipment, supplies, contractual, and

operating expenses). Detail those costs that will be claimed as in-kind match, including but not limited to engineering, planning and administration. Cost data shall be supplied separately for each substantially different proposal component. (For example, land acquisition costs will be presented separately from habitat restoration costs.) Describe and justify what will be obtained with the funds. List key staff members that will be assigned to the proposed work, how much time they will work on the project (how many hours per week), and brief descriptions of duties. Describe all private and public (local, state, and federal) funds by budget category that may be expended in the completion of this proposal. Detail the type, donors and dollar equivalent of matching funds obtained to complete or compliment this proposal, if applicable. Estimated prices are not acceptable.

The Cost/Price data should be presented in a format similar to the example template provided with this SPP (Attachment C).

4. Public Communication Strategy: Demonstrate steps to be taken to collaborate and coordinate with the community impacted. Describe what process(es) will be used to demonstrate inclusiveness, communication, and opportunities for public input over the course of the project. Demonstrate your track record in consensus building and in community development in past projects.
5. Relationship to the Ranking Criteria: Provide a summary of how this project meets each of the objectives indicated by the Ranking Criteria contained in Section VI.B.1 and VI.B.2 below.
6. Project Fact Sheet: Applications must include a one-page summary of their Proposal for use at public meetings, dispersal to community and the State's web page. The Project Fact Sheet shall be submitted in reproducible black and white 8.5" by 11" (both hardcopy. original electronic and *.pdf format).
7. Application/Assurances: If applicable, provide proof of organizational status and if the Offeror claims non-profit tax-exempt status under section 501 (c)(3) of the IRS code, then the Offeror shall submit proof of registration.

Proposals will be evaluated based only on the materials presented. Therefore, Offerors should recognize there will be no opportunity for revision or augmentation.

VI. EVALUATION

A. EVALUATION PROCESS

1. The Work Group will judge the merits of proposals received in accordance with the evaluation factors stated herein and make a recommendation to the Trustees for final decision.
2. The Work Group may request review of the proposals by outside agencies, local governments and subject matter experts at their discretion. The Work Group will consider review comments during the Evaluation Process. The Work Group may request modifications to proposals based on review comments.
3. Failure of the Offeror to provide any information requested herein may result in the disqualification of the proposal. This responsibility is that of the Offeror. The Work Group reserves the right to ask individual Offerors for additional or explanatory information.
4. Proposals may be funded in whole or in part. For example, a proposal may contain several components; but only the Work Group could approve some of those components.
5. If applicable, the Work Group may request a “walk through” with the Offeror to allow the Offeror to show the Work Group the exact location of the work sought to be performed. The Work Group may waive this requirement.

Fact sheets and proposals will be available for public review online at <https://www.colorado.gov/pacific/cdphe/summitville-mine> prior to the public meeting.

6. There will be a public meeting to be held at a location to be determined in Alamosa, LaJara, or Capulin on a date to be determined after the project submission deadline and initial screening review of proposals. Each Offeror will make a presentation regarding his or her proposal. Presentations will be limited to 30 minutes. Public comment will be solicited. The Work Group will not formally respond to public comments, but the Work Group in their evaluation of the various proposals will consider these comments.
7. The Work Group will evaluate all proposals unless there is a conflict of interest. If a member of the Work Group has a conflict of interest or is otherwise affiliated with a project and/or Offeror, then that Work Group member must recuse him/herself from evaluating that proposal.

B. EVALUATION CRITERIA

The Evaluation Process has two parts: a Screening and Ranking Criteria. The Screening Criteria will determine each proposed project's acceptability, relative to the specific scope and objectives of natural resource restoration. The Ranking Criteria will evaluate projects relative to each other according to the criteria outlined below.

In general, projects that include matching fund sources or are cooperative efforts with other organizations, or are clearly very cost-effective, are preferred. Projects will be judged on the level of operation and maintenance required, and a preference will be given to low maintenance projects. Projects that promote a public benefit will be preferred.

1. Screening Criteria

Projects must pass screening criteria to be considered further. These criteria were developed by the Trustee Council to eliminate those projects that are clearly inconsistent with law and with the requirements of the Trustee Council. The screening criteria stipulate that a restoration project must comply with all applicable laws and regulations, address natural resources or services connected to those injured by releases from the Summitville Mine Superfund Site, and be technically feasible.

- i. **Compliance with the SPP requirements:** The project proposal must comply with the requirements of this solicitation.
- ii. **Compliance with laws:** The project must comply with all applicable federal, state, local laws, rules, regulations and permits. Master Plan projects that may not qualify for a NEPA categorical exclusion include (see Section VI.C):
 - Purchase of water rights for instream flow
 - Trade of direct flow diversion right for reservoir storage
 - Increase Terrace Reservoir spillway capacity
 - Mainstem lake or reservoir below Wightman Fork
 - Improve public access to Terrace Reservoir
- iii. **Public health and safety:** The project cannot pose a threat to the health and safety of the public.
- iv. **Eligibility for NRDA Funding:** The Trustee Council will consider whether NRDA funding is the appropriate source. This determination will be based on whether the project is required as mitigation under state or federal statutes, or other legal requirements. The Trustee Council believe that the following

Alamosa River watershed natural resources have been potentially injured as a result of activities at the Summitville Mine Superfund Site:

- Surface water
- Groundwater
- Terrace Reservoir
- Riparian Habitat
- Recreational Uses
- Biological Resources

The Trustee Council will focus on the connection or “nexus” between the natural resources that the proposed projects would restore, and the natural resources or services injured by the historical contaminant releases from the Summitville Mine Superfund Site and their location. Projects that restore, rehabilitate, replace, enhance or acquire the equivalent of the same or similar natural resources and services injured by the release will be favored over those that benefit other comparable natural resources or services.

2. Ranking Criteria

The Work Group has developed the following criteria to evaluate and rank proposed projects. These criteria reflect the Work Group’s requirements and priorities for restoration, as described in the Master Plan. A scoring system will be used whereby a total of 300 points is possible. A project must receive a minimum score of 200 points to be eligible for NRDA funds.

- i. **Alamosa River Watershed Restoration Master Plan Projects:** Proposals that highlight, include or emphasize projects contained in the Master Plan (see Section IV.C).
- ii. **Public Acceptance:** The Work Group will consider the degree of public acceptance of proposed projects. Written comments will be solicited from the public.
- iii. **Likelihood of Adverse Impacts:** The proposed projects should avoid or minimize adverse impacts to the environment and associated natural resources. For example, adverse impacts could be caused by collateral injuries when implementing, or as a result of implementing, the proposed project alternative. The Work Group will consider the avoidance of future short-term and long-term injuries as well as restoring past injuries when evaluating proposed projects.

- iv. **Likelihood of Success:** The Work Group will consider the potential for success and the level of expected return of natural resources and natural resource services. Proposed project restoration goals should be clear and measurable. The Work Group will also consider the ability to monitor and evaluate the success of the project; the ability to correct any problems that arise during the course of the proposed project alternative; and the capability of individuals or organizations expected to implement the alternative.
- v. **Technical Feasibility:** The project must be technically feasible and procedurally sound. Additionally, the project should have a high likelihood of success, based on consideration of natural processes and addressing causes of injuries rather than symptoms. The Work Group will consider the level of uncertainty or risk involved in implementing the project. A proven track record demonstrating the success of projects utilizing a similar or identical restoration technique can be used to satisfy this evaluation standard.
- vi. **Multiple Natural Resource Benefits:** The Work Group will consider the extent to which a proposed project benefits more than one natural resource or natural resource service. This will be measured in terms of the quantity and associated quality of the types of natural resources or service benefits expected to result from the proposed project.
- vii. **Time to Provide Benefits:** The Work Group will consider the time it takes for benefits to be provided to the target ecosystem or public. A more rapid response to providing benefits may be preferable though this must be balanced with duration, quantity and quality of expected benefits.
- viii. **Duration of Benefits:** The Work Group will consider the expected sustainability and duration of benefits from the proposed project. Long-term benefits are the objective. Proposed projects are expected to provide long-term sustainable benefits (for at least 10 years after project completion).
- ix. **Opportunities for Collaboration/Matching Funds:** The Work Group will consider the likelihood of matching funds, in-kind services, or volunteer assistance, with a minimum of 50% match to NRD funds; as well as coordination with other ongoing or proposed projects. External funding and support services that reduce costs or extend benefits are preferable.

- x. **Protection of Implemented Project:** The Work Group will consider the need of the proposed project to be protected, and if so opportunities to protect the proposed project and resulting benefits over time through conservation easements, land acquisition, or other types of natural resource long-term (at least 10 years) protection of the proposed project site and the benefits it provides.
- xi. **Project Cost (cost effectiveness):** The Work Group will consider if the proposed project has a high ratio of expected benefits to expected costs. This includes a comparison to determine if the proposed project is cost-effective relative to other projects that would benefit the same natural resource. Finally, the Work Group will evaluate the appropriateness of ongoing operation and maintenance costs, after proposed project has achieved restoration goals.
- xii. **Project Consistency with Regional Planning (Local Acceptability):** The Work Group will consider proposed projects that are consistent with applicable land and resource management plans, can be incorporated into a holistic land and natural resource management plan, take advantage of partnerships with local community groups and facilitates in-kind contributions for restoration.
- xiii. **Public Benefit and Access:** The Work Group will consider the extent to which the public at large will have access to, or benefit from, the proposed project.
- xiv. **Public Communication Strategy:** The Work Group will consider collaboration techniques and methods used during the project implementation and OMM phases.

C. Project Analysis under the National Environmental Policy Act (NEPA)

Each selected project will undergo an environmental analysis in compliance with NEPA. The Federal trustees will conduct this NEPA analysis as promptly as possible following project selection and their receipt of the necessary information. NEPA analysis must be complete and a decision document rendered prior to the Contract and Notice to Proceed. This analysis will make use of the information provided by proposal offeror that is relevant to the factors, termed exceptions, for categorical exclusions, which are listed in Attachment D, as well as information regarding the screening and ranking criteria. Proposed projects in the preferred alternative will be individually evaluated; it is anticipated that some projects, as envisioned in the Master Plan, would be regarded as being categorically

excluded in NEPA analysis. Several projects, particularly those involving water rights, water diversions and storage, would probably meet at least one of the exceptions for categorical exclusion, and require extensive planning and detailed environmental analysis.

Attachment A
Example Contract

DEPARTMENT OF PUBLIC HEALTH AND
ENVIRONMENT

CMS ROUTING NO. *** *****

CONTRACT

STATE:

State of Colorado for the use & benefit of the
Department of Public Health and Environment

CONTRACTOR:

CONTRACT MADE DATE:

CORE ENCUMBRANCE NUMBER:

TERM:

This contract shall be effective upon approval by
the State Controller, or designee, or on mm/dd/yyyy,
whichever is later. The contract shall end on mm/dd/yyyy.

PROCUREMENT METHOD:

>select one<

BID/RFP/LIST PRICE AGREEMENT NUMBER:

LAW SPECIFIED VENDOR STATUTE:

STATE REPRESENTATIVE:

CONTRACTOR DUNS:

CONTRACTOR ENTITY TYPE:

>select one<

BILLING STATEMENTS RECEIVED:

>select one<

STATUTORY AUTHORITY: Not Applicable

CLASSIFICATION: >select one<

CONTRACT PRICE NOT TO EXCEED:

FEDERAL FUNDING DOLLARS:

STATE FUNDING DOLLARS:

OTHER FUNDING DOLLARS:

Specify "Other":

MAXIMUM AMOUNT AVAILABLE PER FISCAL YEAR:

FY**:

FY**:

FY**:

FY**:

FY**:

PRICE STRUCTURE: >select one<

CONTRACTOR REPRESENTATIVE:

PROJECT DESCRIPTION:

>Insert a brief summary of the statutory or regulatory requirements of the program and its intended outcome<

EXHIBITS:

The following exhibits are hereby incorporated:

- Exhibit A - Additional Provisions (and any of its Attachments; e.g., A-1, A-2, etc.)
- Exhibit B - Statement of Work (and any of its Attachments; e.g., B-1, B-2, etc.)
- Exhibit C - Budget (and any of its Attachments; e.g., C-1, C-2, etc.)

COORDINATION:

The State warrants that required approval, clearance and coordination has been accomplished from and with appropriate agencies.

APPROVAL:

In no event shall this contract be deemed valid until it shall have been approved by the State Controller or his/her designee.

PROCUREMENT:

This contractor has been selected in accordance with the requirements of the Colorado Procurement Code.

PRICE PROVISIONS:

Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services and/or deliverables. The liability of the State at any time for such payments shall be limited to the encumbered amount remaining of such funds.

Authority to enter into this Contract exists in 25-1.5-101 C.R.S. and funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance, and coordination have been accomplished from and with appropriate agencies.

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

GENERAL PROVISIONS

The following clauses apply to this contract. In some instances, these general clauses have been expanded upon in other sections/exhibits of/to this contract. To the extent that other provisions of the contract provide more specificity than these general clauses, the more specific provision shall control.

1. Governmental Immunity. Notwithstanding any other provision to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et.seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 et.seq., CRS and the risk management statutes, Section 24-30-1501, et.seq., CRS as now or hereafter amended.
2. Available Funds-Contingency
 - a. Available Funds. The State is prohibited by law from making commitments beyond the term of the State's current fiscal year; therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the available amount remaining of such encumbered funds. In the event that state funds become unavailable for this Contract, as determined by the State, the State may immediately terminate this Contract or amend it accordingly.
 - b. Federal Funds Contingency. Payment pursuant to this contract, if in federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable, as determined by the State, the State may immediately terminate this contract or amend it accordingly without liability including liability for termination costs.
3. Billing Procedures. The State shall establish billing procedures and requirements for payment due the Contractor in providing performance pursuant to this contract. The Contractor shall comply with the established billing procedures and requirements for submission of billing statements. The State shall comply with CRS 24-30-202(24) when paying vendors upon receipt of a correct notice of the amount due for goods or services provided hereunder.
4. Exhibits - Interpretation. Unless otherwise stated, all referenced exhibits are incorporated herein and made a part of this contract. Unless otherwise stated, the terms of this contract shall control over any conflicting terms in any of its exhibits. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of this Contract; 2) the Additional Provisions **Exhibit A** and its attachments if included; 3) the Contract (other than the Special Provisions); 4) the RFP if applicable and attached; 5) the Scope/Statement of Work **Exhibit B** and its attachments if included; 6) the Contractor's proposal if applicable and attached; 7) other exhibits/attachments in their order of appearance.

The conditions, provisions, and terms of any RFP attached hereto, if applicable, establish the minimum standards of performance that the Contractor must meet under this Contract. If the Contractor's Proposal, if attached hereto, or any attachments or exhibits thereto, or the Scope/Statement of Work **Exhibit B**, establish or create standards of performance greater than those set forth in the RFP, then the Contractor shall also meet those standards of performance under this Contract.
5. Notice and Representatives. For the purposes of this contract, the representative for each party is as designated herein. Any notice required or permitted may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address provided, and if sent by mail it is effective when posted in a U.S. Mail Depository with sufficient postage attached thereto. Notice of change of address or change or representative shall be treated as any other notice.

6. Contractor Representations - Qualifications/Licenses/Approvals/Insurance. The Contractor certifies that, at the time of entering into this contract, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc. required to properly provide the services and/or supplies covered by this contract in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or non-renewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this contract, shall be grounds for termination of this contract by the State.

Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this contract.

7. Legal Authority. The Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and bind the Contractor to its terms. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.

8. Insurance – Contractor. During the term of this contract, and any renewals or extensions thereof, Contractor, and its Subcontractors shall, and hereby agrees to, obtain, maintain, and keep in force at all times during the term of this contract an insurance policy or policies, issued by a company authorized to do business in Colorado, in the kinds and minimum amounts, and under the conditions specified below.

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of Contractor's employees acting within the course and scope of their employment.
- b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - I. \$1,000,000 each occurrence;
 - II. \$1,000,000 general aggregate;
 - III. \$1,000,000 products and completed operations aggregate; and
 - IV. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
- d. The State of Colorado shall be named as an additional insured on the Commercial General Liability policy. Coverage required of the contract will be primary over any insurance or self-insurance program carried by Contractor or the State of Colorado.
- e. The insurance shall include provisions preventing cancellation or non-renewal without at least thirty (30) calendar days prior written notice to the State by certified mail.
- f. The Contractor will require all insurance policies in any way related to the contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- g. All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
- h. The Contractor shall provide certificates showing insurance coverage required by this contract to the State by the effective date of the contract. No later than fifteen (15) calendar days prior to the

expiration date of any such coverage, the Contractor shall deliver to the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the Contractor shall thereupon within ten (10) calendar days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

- i. The Contractor shall provide such other insurance as may be required by law, or in a specific solicitation.

9. Rights in Data, Documents and Computer Software or Other Intellectual Property. All intellectual property including without limitation, databases, software, documents, research, programs and codes, as well as all, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this contract shall be the exclusive property of the State. Unless otherwise stated, all such material shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this contract without the prior written consent of the State. All documentation, accompanying the intellectual property or otherwise, shall comply with the State requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area. Software documentation shall be delivered by Contractor to the State that clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages. The documentation shall contain source code which describes the program logic, relationship between any internal functions, and identifies the disk files which contain the various parts of the code. Files containing the source code shall be delivered and their significance to the program described in the documentation. The documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated. The Contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software. The State's ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

If any material is produced under this Contract and the parties hereto mutually agreed that said material could be copyrighted by Contractor or a third party, then the State, and any applicable federal funding entity, shall, without additional cost, have a paid in full, irrevocable, royalty free, and non-exclusive license to reproduce, publish, or otherwise use, and authorize others to use, the copyrightable material for any purpose authorized by the Copyright Law of the United States as now or hereafter enacted. Upon the written request of the State, the Contractor shall provide the State with three (3) copies of all such copyrightable material.

10. Confidential or Proprietary Information. Subject to the Public (Open) Records Act, section 24-72-101, *et seq.*, C.R.S., as amended, if the Contractor obtains access to any records, files, or other information of the State in connection with, or during the performance of, this Contract, then the Contractor shall keep all such records, files, or other information confidential and shall comply with all laws and regulations concerning the confidentiality of all such records, files, or information to the same extent as such laws and regulations apply to the State. Contractor shall protect the confidentiality of all information accessed, used, held, created or received in connection with this Contract and shall insure that any subcontractors or agents of Contractor protect the confidentiality of all information under this Contract. Contractor shall access, use and disclose confidential information only for the operation and administration of the Contract, and shall not directly or indirectly disclose confidential information after the term of the Contract. Contractor shall implement appropriate safeguards as are necessary to prevent accidental or unauthorized use or disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for maintaining and transmitting electronic confidential information. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this Contract. Any breach of confidentiality by the Contractor, or third party agents of the Contractor, shall constitute good cause for the State to cancel this Contract, without liability to the State. Any State waiver of an alleged breach of confidentiality by the Contractor, or third party agents of the Contractor, does not constitute a waiver of any subsequent breach by the Contractor, or third party agents of the Contractor.

The Contractor must identify to the State the information that it considers confidential or proprietary. This is a continuing obligation. Confidential or proprietary information for the purpose of this paragraph is information

relating to Contractor's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, information which is in the public domain, or information which is or could have been acquired/developed independently by the State or a third party. Notwithstanding the foregoing, the State shall not be in violation of its obligations under this section should it disclose confidential information if such disclosure is, in the sole opinion of the State's legal counsel, required by applicable law and/or legal process (including, but not limited to, disclosures required pursuant to the Colorado (Open) Public Records Act, sections 24-72-201, *et. seq.*, C.R.S., as now or hereafter amended). The State shall endeavor to provide notice to the Contractor, as promptly as practicable under the circumstances, of any demand, request, subpoena, court order or other action requiring such disclosure, in order to afford Contractor the opportunity to take such lawful action as it deems appropriate to oppose, prevent or limit the disclosure, solely at its own instance and expense; but nothing herein shall be construed to require the State to refuse or delay compliance with any such law, order or demand.

11. Records Maintenance, Performance Monitoring & Audits. The Contractor shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under this contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Contractor records.

The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with this contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, guardian, or the State. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its agents, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its agents, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time during the term of this contract and for a period of six (6) years following the termination of this contract, to assure compliance with the state or federal government's terms and/or to evaluate the Contractor's performance. Any amounts the State paid improperly shall be immediately returned to the State or may be recovered in accordance with other remedies.

All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified herein and shall be maintained by the Contractor in a central location as custodian for the State on behalf of the State, for a period of six (6) years from the date of final payment or submission of the final federal expenditure report under this contract, unless the State requests that the records be retained for a longer period, or until an audit has been completed with the following qualification. If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the six (6) year period, or if audit findings have not been resolved after a six (6) year period, the materials shall be retained until the resolution of the audit findings.

The Contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee thereof, in its sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this contract. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analyses, on-site verification, formal audit examinations, or any other procedures as deemed reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

12. Taxes. The State, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. 39- 26-114(a) and 203, as amended]. The Contractor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

13. Conflict of Interest. During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this contract, without the prior written approval of the State.

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the contract.

Further, the Contractor, and its subcontractors or subgrantees, shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of the Contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of the employee's immediate family;
- c. The employee's partner; or
- d. An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential contractors, or parties to subagreements.

14. Inspection and Acceptance (Services) and Contractor Warranty. The State reserves the right to inspect services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

Contractor warrants that all supplies furnished under this contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor shall, at its option, repair or replace any supplies that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the State all written manufacturer warranties relating to the supplies and to deliver such written warranties to the State.

15. Adjustments in Price. Adjustments to contract prices are allowable only so long as they are mutually agreeable by the parties and so long as they are included within a contract amendment made prior to the effective date of the price adjustments and made pursuant to the State of Colorado Fiscal Rules, signed by the parties, and approved by the State Controller or designee. The Contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

- a. By agreement on a fixed-price adjustment;
- b. By unit prices specified in the contract;
- c. In such other manner as the parties may mutually agree; or

- d. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.
16. Contract Modifications. This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. If either the State or the Contractor desires to modify the terms and conditions of this Contract, then the parties shall execute a standard written amendment to this Contract initiated by the State. The standard written amendment must be executed and approved in accordance with all applicable laws and rules by all necessary parties including the State Controller or delegate.
17. Litigation. The Contractor shall within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency notify the State that it is a party defendant in a case which involves services provided under this contract. The Contractor shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.
18. Notice of Breach and Dispute Resolution: If the State or the Contractor believes in good faith that the other party has failed to timely complete a deliverable, or has otherwise committed a material breach of this Contract, then the non-breaching party shall notify the breaching party in writing of the alleged breach within ten (10) business days of: 1) the date of the alleged breach if the non-breaching party is aware of the breach at the time it occurs; or 2) the date that the non-breaching party becomes aware of the breach.
- Upon receipt of written notice of an alleged breach of the Contract, the breaching party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, within which to cure the alleged breach or to notify the non-breaching party in writing of the breaching party's belief that a material breach of this Contract has not occurred. Failure of the breaching party to cure or respond in writing within the above time period shall result in the non-breaching party being entitled to pursue any and all remedies available at law or in equity.
- Except as herein specifically provided otherwise, disputes concerning the performance of this contract which cannot be resolved by the designated contract representatives shall be referred in writing to a senior departmental management staff designated by the department and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.
- The Contractor and its sureties shall be liable for any damage to the State resulting from the Contractor's breach, whether or not the Contractor's right to proceed with the work is terminated. The State reserves the right, in its sole discretion, to determine whether or not to accept substituted performance tendered by the Contractor or the Contractor's sureties and acceptance is dependent upon completion of all applicable inspection procedures.
19. Remedies: In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. Without limitation, these remedial actions include:
- a. withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
 - b. require the vendor to take necessary action to ensure that the future performance conforms to contract requirements; and/or
 - c. request the removal from work on the contract of employees or agents of Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or

- d. deny payment for those services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed, or if performed would be of no value to the State; denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
- e. suspend Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- f. modify or recover payments (from payments under this contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation; and/or
- g. terminate the contract.

These remedies in no way limit the remedies available to the State in the termination provisions of this contract, or remedies otherwise available at law.

20. Termination.

- a. Termination for Default. The State may terminate the contract for cause. In the event this contract is terminated for cause, the State will only reimburse the Contractor for accepted work or deliverables received up to the date of termination. In the event this contract is terminated for cause, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Contractor, and the State may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined. If it is determined that the Contractor was not in default then such termination shall be treated as a termination for convenience as described herein. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract.
- b. Termination for Convenience. The State shall have the right to terminate this contract at any time the State determines necessary by giving the Contractor at least twenty (20) calendar days prior written notice. If notice is so given, this contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

In the event that the State terminates this contract under the Termination for Convenience provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:

- I. the contract price for performance of work, which is accepted by the State, up to the effective date of the termination;
- II. reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract;
- III. reasonable profit on the completed but undelivered work up to the date of termination;
- IV. the costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor;
- V. reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the Contractor.

c. Immediate Termination. This contract is subject to immediate termination, in whole or in part, by the State without further liability in all of the following circumstances:

- I. In the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy;
- II. Upon verifying that the Contractor has engaged in or is about to participate in fraudulent or other illegal acts; or
- III. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract.

21. Stop Work Order. Upon written approval by the State Procurement Officer or delegee, the State may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the Contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, as legally extended, the State Procurement Officer or delegee shall either:

- a. Cancel the stop work order; or
- b. Terminate the work covered by such order; or
- c. Terminate the contract.

If a stop work order issued under this clause is properly canceled, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified accordingly in writing pursuant to the terms of this contract dealing with contract modifications, if:

- a. The stop work order results in increased time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- b. The Contractor asserts claim for such an adjustment within thirty (30) days after the end of the period of work stoppage.

If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

22. Venue. The parties agree that exclusive venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

23. Understanding of the Parties.

- a. Complete Integration. This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.
- b. Severability. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.
- c. Binding Agreement. Except as herein specifically provided otherwise, it is expressly understood and agreed that this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All rights of action relating to enforcement of the terms and conditions shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third

person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

- d. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
- e. Continuing Obligations. The State and the Contractor's obligations under this contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
- f. Assignment and Change In Ownership, Address, Financial Status. Except as herein specifically provided otherwise, the rights, duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, subgranted or subcontracted except with the express prior written consent of the State, which consent shall not be unreasonably withheld. In the case of assignment or delegation, Contractor and the State shall execute the standard State novation agreement prior to the assignment or delegation being effective against the State. The subgrants and subcontracts permitted by the State shall be subject to the requirements of this contract. The Contractor is responsible for all subcontracting arrangements, delivery of services, and performance of any subgrantor or subcontractor. The Contractor warrants and agrees that any subgrant or subcontract, resulting from its performance under the terms and conditions of this contract, shall include a provision that the said subgrantor or subcontractor shall abide by the terms and conditions hereof. Also, the Contractor warrants and agrees that all subgrants or subcontracts shall include a provision that the subgrantor or subcontractor shall indemnify and hold harmless the State. The subgrants or subcontractors must be certified to work on any equipment for which their services are obtained.

This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller – as distinguished from the State Controller – and the Contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

The Contractor is required to formally notify the State prior to, or if circumstances do not allow prior notification then immediately following, any of the following:

- I. change in ownership;
 - II. change of address;
 - III. the filing of bankruptcy.
- g. Force Majeure. Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure.” As used in this contract “force majeure” means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions, strikes or other labor disputes; freight embargoes; or unusually severe weather.
 - h. Changes In Law. This contract is subject to such modifications as may be required by changes in applicable federal or State law, or their implementing rules, regulations, or procedures. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in the form of a written amendment to this Contract that has been previously executed and approved in accordance with applicable law.
 - i. Media or Public Announcements. Unless otherwise provided for in this Contract, the Contractor shall not make any news release, publicity statement, or other public announcement, either in

written or oral form that concerns the work provided under this Contract, without the prior written approval of the State. The Contractor shall submit a written request for approval to the State no less than ten (10) business days before the proposed date of publication. The State shall not unreasonably withhold approval of the Contractor's written request to publish. Approval or denial of the Contractor's request by the State, shall be delivered to the Contractor in writing within six (6) business days from the date of the State's receipt of Contractor's request for approval.

If required by the terms and conditions of a federal or state grant, the Contractor shall obtain the prior approval of the State and all necessary third parties prior to publishing any materials produced under this Contract. If required by the terms and conditions of a federal or state grant, the Contractor shall also credit the State and all necessary third parties with assisting in the publication of any materials produced under this Contract. It shall be the obligation of the Contractor to inquire of the State as to whether these requirements exist and obtain written notification from the State, as Contractor deems appropriate.

24. Intellectual Indemnity. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by Contractor under this agreement constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives Contractor written notice within twenty (20) days of receipt by the State of such notice of such claim or suit, provides assistance and cooperation to Contractor in connection with such action, and Contractor has sole authority to defend or settle the claim. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, Contractor shall keep the State advised of any settlement or defense.

Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction, awarded or agreed to by Contractor regarding such claims or suits.

If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, Contractor, after consultation with the State, shall do one of the following at Contractor's expense:

- a. produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof; or
- b. replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and State specifications; or
- c. suitably modify the products, or part thereof.

Except as otherwise expressly provided herein, Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon:

- a. the use of an altered release if Contractor had not consented to the alteration; or
- b. the combination, operation or use of the product(s) with programs or data which were not furnished by Contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than Contractor had not been combined, operated or used with the product(s); or
- c. the use of product(s) on or in connection with equipment or software not permitted under this contract if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

25. Conformance with Law. If this Contract involves federal funds or compliance is otherwise federally mandated, the Contractor and its agent(s) shall at all times during the term of this contract strictly adhere to

all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include:

- a. Office of Management and Budget Circulars and The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;
- b. the “Hatch Act” (5 U.S.C. 1501-1508) and Public Law 95-454, Section 4728
- c. when required by Federal program legislation, the “Davis-Bacon Act”, as amended (40 U.S.C. 3141-3148) as supplemented by Department of Labor Regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”);
- d. when required by Federal program legislation, the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building of Public Work Financed in Whole or in Part by Loans or Grants from the United States”).
- e. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794 (regarding discrimination);
- f. the “Americans with Disabilities Act” (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111 - 12117, 12131 - 12134, 12141 - 12150, 12161 - 12165, 12181 - 12189, 12201 - 12213 and 47 U.S.C. 225 and 47 U.S.C. 611);
- g. if the Contractor is acquiring an interest in real property and displacing households or businesses in the performance of this Contract, then the Contractor is in compliance with the “Uniform Relocation Assistance and Real Property Acquisition Policies Act”, as amended, (Public Law 91-646, as amended, and Public Law 100-17, 101 Stat. 246 - 256);
- h. when applicable, the Contractor shall comply with the provisions of the “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments” (Common Rule);
- i. Section 2101 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355; and
- j. If the Contractor is a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d – 1320d-8, the Contractor shall comply with applicable HIPAA requirements. **If Contractor is a business associate under HIPAA, Contractor hereby agrees to, and has an affirmative duty to, execute the State’s current HIPAA Business Associate Agreement. In this case, Contractor must contact the State’s representative and request a copy of the Business Associate Agreement, complete the agreement, have it signed by an authorized representative of the Contractor, and deliver it to the State.**
- k. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required there under. This Act is also referred to as FFATA.
- l. Contractor shall comply with the provisions of Section 601 of Title VI of the Civil Rights Act of 1964, as amended.
- m. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 comply with the equal opportunity clause provided under 41 CFR 60-1.3(b), in accordance with Executive Order 11246, “Equal Employment Opportunity: (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
- n. where applicable, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
- o. if the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into an agreement with a small business firm or nonprofit organization, comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- p. the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.
- q. if applicable, comply with the mandatory standards and policies on energy efficiency contained within the State of Colorado’s energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201.

26. Contractor Affirmation. If this Contract involves federal funds or compliance is otherwise federally mandated, then by signing and submitting this Contract the Contractor affirmatively avers that:
- a. the Contractor is in compliance with the requirements of the “Drug-Free Workplace Act” (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. 701 et seq.);
 - b. the Contractor and all principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor and all principals shall comply with all applicable regulations pursuant to Executive Order 12549 (3 CFR Part 1986 Comp., p. 189) and Executive Order 12689 (3 CFR Part 1989 Comp., p. 235), Debarment and Suspension; and,
 - c. the Contractor shall comply with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including, Certification and Disclosure, 29 C.F.R. 93.110(1990) and where applicable, the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
27. Annual Audits. If the Contractor expends federal funds from all sources (direct or from pass-through entities) in an amount of \$750,000 or more during its fiscal year, then the Contractor shall have an audit of that fiscal year in accordance with Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). If the Contractor expends federal funds received from the State in an amount of \$750,000 or more during its fiscal year, then the Contractor shall furnish one (1) copy of the audit report(s) to the State’s Internal Audit Office within thirty (30) calendar days after the Contractor’s receipt of its auditor’s report or nine (9) months after the end of the Contractor’s audit period, whichever is earlier. If (an) instance(s) of noncompliance with federal laws and regulations occurs, then the Contractor shall take all appropriate corrective action(s) within six (6) months of the issuance of (a) report(s).
28. Holdover. In the event that the State desires to continue the services provided for in this Contract and a replacement contract has not been fully executed by the expiration date of the Contract, this Contract may be extended unilaterally by the State for a period of up to two (2) months upon written notice to the Contractor under the same terms and conditions of the original Contract including, but not limited to, prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.
29. Survival of Certain Contract Terms. Notwithstanding anything in this contract to the contrary, the parties understand and agree that all terms and conditions of this contract which may require continued performance, compliance, or effect beyond the termination date of the contract and shall survive such termination date and shall be enforceable by the State as provided herein in the event of failure to perform or comply by the Contractor.
30. Indemnification. Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
31. **STATEWIDE CONTRACT MANAGEMENT SYSTEM** *[This section shall apply when the Effective Date is on or after July 1, 2009 and the maximum amount payable to Contractor hereunder is \$100,000 or higher]*

By entering into this Contract, Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor’s performance shall be evaluated in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation of Contractor’s performance shall be part of the normal contract administration process and Contractor’s performance will be systematically recorded in the statewide Contract Management System. Areas of review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor’s obligations under this Contract shall be determined by the

specific requirements of such obligations and shall include factors tailored to match the requirements of the Statement of Project of this Contract. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation determine that Contractor demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Public Health and Environment and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (ii) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

32. Performance Outside the State of Colorado and/or the United States

[Not applicable if Contract Funds include any federal funds]

Following the Effective Date, Contractor shall provide written notice to the State, in accordance with the Notices and Representatives provision, within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this provision shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this provision shall constitute a material breach of this Contract.

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset

intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. **PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.** *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
12. **PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

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THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR:

Legal Name of Contracting Entity

Print Name of Authorized Officer

Signature of Authorized Officer

Date

Print Title of Authorized Officer

STATE OF COLORADO:

JOHN W. HICKENLOOPER, GOVERNOR

By: _____

For Executive Director

Department of Public Health and Environment

Department Program Approval:

By: _____

Insert Name & Title of Program Signer

LEGAL REVIEW

Cynthia H. Coffman, Attorney General

By: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER:
Robert Jaros, CPA, MBA, JD**

By: _____

Date _____

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Attachment B
Evaluation Sheet

Summitville Alamosa River Watershed/Natural Resource Damage Fund
NRDA / Summitville Project Evaluation Sheet

06-HAZ0001

Project Name: _____

Project Offeror: _____

Ranking Criteria	No. of points Criterion is worth	No. of points awarded by this reviewer
ARWMP Projects	45	
Public Acceptance	15	
Likelihood of Adverse Impacts	10	
Likelihood of Success	30	
Technical Feasibility	30	
Multiple Natural Resource Benefits	30	
Time to Provide Benefits	10	
Duration of Benefits	20	
Opportunities for Collaboration/Matching Funds	25	
Protection of Implemented Project	10	
Project Cost/Effectiveness	35	
Project Consistency with Regional Planning	10	
Public Benefit and Access	15	
Public Communication Strategy	15	
TOTAL POINTS AWARDED:	300	

Attachment C
NEPA Categorical Exclusion Exception Review

National Environmental Protection Assessment

The following are criteria to be considered in determining whether an action is categorically excluded from further environmental evaluation and analysis. If a project causes or meets any one or more of these criteria, further environmental analysis is necessary; if a project does not cause or meet any of these criteria, it then qualifies as a Categorical Exclusion from further environmental analysis. The criteria are not in any particular order.

1. Adverse effects on listed or proposed threatened or endangered species or critical habitat.
2. Highly controversial environmental effects.
3. Related to other actions with individually insignificant, but cumulatively significant effects.
4. Adverse effects on unique geographic characteristics, such as cultural resources, wetlands, ecologically significant, or critical areas.
5. Highly uncertain and potentially significant effects or involve unique or unknown environmental effects.
6. Establish precedent or decision for future action.
7. Adverse effects on properties listed or eligible for National Register of Historic Places.
8. Requires compliance with Executive Order 11988 (Floodplain) or Executive Order 11990 (Wetlands) or Fish and Wildlife Coordination Act.
9. Threatens to violate federal, state, local, or tribal law for environmental protection.

Attachment D Question
Submittal Form

**Alamosa River Watershed
Natural Resource Damages
SPP Project 17-HAZ0001**

Name:_____

Organization:_____

Email:_____

FAX:_____ **PHONE:**_____

Question: